

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast Signals)	CS Docket No. 98-120
)	
Amendments to Part 76 of the Commission's Rules)	
)	
Implementation of the Satellite Home Viewer Act of 1999:)	
)	
Local Broadcast Signal Carriage Issues)	CS Docket No. 00-96
)	
Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals)	CS Docket No. 00-2
)	
)	

**REPLY COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

I. INTRODUCTION

The Consumer Electronics Association (“CEA”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, hereby respectfully submits its reply comments in response to the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) issued by the Commission in the above-captioned proceeding.¹

¹ See *In the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission’s Rules; Implementation of The Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, CS Docket 98-120, FCC 01-22, 66 Fed. Reg. 16523 (rel. Jan 23, 2001) (“*Further Notice*”).

As part of its initial comments, CEA discussed why dual or multicast carriage of digital broadcast signals over cable is needed to facilitate a consumer-friendly DTV transition.² Our initial comments also addressed how an increase in digitally originated or non-simulcast dual carriage will trigger a flood of new digital content, thereby increasing demand for digital equipment.³ Finally, CEA advocated a broad definition of “program-related” to ensure that the DTV transition is not stifled by unreasonable limitations on advanced service offerings.⁴

As the principal trade association of the consumer technologies industry, CEA is particularly concerned that while manufacturers of digital television equipment are doing their utmost to promote and support the DTV transition, cable operators have embarked on a course that could lead to limitations on consumer access to digital equipment and advanced digital television functionalities. Several commenters in this proceeding share CEA’s views.⁵

II. DUAL OR MULTICAST CARRIAGE WILL FACILITATE THE DTV TRANSITION

As Univision Communications, Inc. (“Univision”) points out in its comments, the demand for digital television receivers will be hampered (and, therefore, the digital transition will be delayed) if broadcast digital programming is not readily accessible over cable.⁶ CEA agrees that, because most consumers receive their primary television signal via cable, DTV’s

² See *In the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission’s Rules; Implementation of The Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, Initial Comments of the Consumer Electronics Association at 3 (filed June 11, 2001).

³ See *Id.* at 6.

⁴ See *Id.* at 8.

⁵ See, e.g., Comments of C-Span and Univision.

⁶ See Comments of Univision at 8.

success hinges on access to that medium and, therefore, some form of multiple carriage is needed to ensure a successful and timely transition to digital television.

Seventy percent of American households receive their primary video signal through cable, and they rightfully expect to receive their DTV the same way they receive their other video services. Alternatives to cable carriage of DTV signals, such as requiring cable consumers to manually switch their equipment between cable and over-the-air broadcasting modes to receive their DTV, are simply unrealistic and would create widespread consumer inconvenience. These difficulties would be compounded by antenna access and other equipment considerations. Further, Univision correctly predicts that broadcasters are unlikely to abandon their existing analog audiences as a means to procure cable carriage of their digital signals. Broadcasters are also unlikely to implement an immediate transition to digital-only broadcasting.⁷ Faced with an “either/or” situation, the rational decision for broadcasters would be to retain analog carriage to the detriment of DTV’s goals and the digital transition. The negative effects of this either/or choice are apparent. Without assurance that digital broadcast signals will be carried to America’s nearly 70 million cable households, broadcasters and programmers will have little incentive to produce compelling digital programming. Consumers will have less incentive to purchase digital receivers. And, it will become less likely that the digital transition will be completed by the 2006 target date.

CEA favors cable carriage of digital broadcast signals to the maximum extent possible. Optimally, the transition to DTV will be maximized if *all* new digital broadcast services are available to all consumers, including cable subscribers. Given capacity constraints on some cable operators, however, a scalable, capacity-based dual or multicast carriage rule would best

⁷ See *Id.* at 13.

serve the public interest.⁸ Under CEA's general proposal, 750 MHz cable systems would be required to carry all of a broadcaster's "free" (non-subscription) programming. Carriage requirements for other systems would take into account capacity constraints. Such capacity-based dual/multicast carriage requirements provide forward-looking flexibility at a time when cable operators are rapidly upgrading their systems. The Public Broadcasters' comment outlines a detailed dual-carriage proposal that includes a capacity-based trigger similar to CEA's proposal.⁹ CEA believes that such capacity-sensitive dual-carriage plans embody the appropriate balance between all of the competing considerations and policy issues.

III. AN AMPLE SUPPLY OF COMPELLING, DIGITALLY ORIGINATED PROGRAMMING IS THE PREREQUISITE TO A SUCCESSFUL DTV TRANSITION

CEA reiterates that the foundation of DTV's success rests with the widespread availability of original and novel digital and/or HDTV content. CEA agrees with commenters such as C-Span Networks and the National Cable & Telecommunications Association ("NCTA"), that demand for digital consumer equipment is impacted by the lack of original digital or HDTV programming and the widespread broadcast industry practice of merely simulcasting upconverted analog programming in digital format.¹⁰ Without value-added programming, the demand for digital equipment cannot reach its potential. While the situation is commonly described as a "chicken and egg" scenario, the history of the consumer electronics industry demonstrates that ample and compelling digital content drives consumer demand for digital equipment. Consumers cannot be expected to purchase digital receivers in anxious

⁸ See Comments of CEA at 5.

⁹ See Comments of the Public Broadcasters at 7-15.

¹⁰ See Comments of C-Span Networks (National Cable Satellite Corporation) at 3; Comments of NCTA at 12.

anticipation that value-added content will someday become available, especially given the current dearth of HDTV and digitally originated digital programming. As NAB/MSTV/ALTV explains, mandatory dual carriage of digital signals will “begin a “virtuous circle” of increased investments in digital programming, with resulting increased demand for digital receivers.”¹¹

Broadcasters should be discouraged from merely simulcasting a digitized upconverted version of their analog programming because it is wastefully duplicative and adds little additional quality or value to the viewer experience. Simulcasting upconverted analog programming also will not maximize consumer demand for DTV equipment. As C-Span commented, “[t]he real incentive for consumers to invest in digital television will be compelling digital-only or high definition programming that they cannot get any other way.”¹²

IV. ADVANCED SERVICES DEPEND ON A BROAD DEFINITION OF “PROGRAM-RELATED”

“Program-related” should include *all information in any way related to the entire non-subscription broadcast multiplex*. The definition of the term should be broad enough to encompass program guides and other material unrelated to the current program being viewed, so long as it is not provided on a fee or subscription basis.¹³ Otherwise, a very real risk exists that the advanced services epitomizing the digital transition and the future of television (such as interactive television) will be jeopardized. For example, as Gemstar-TV Guide International, Inc. (“Gemstar”) and NAB/MSTV/ALTV agree, narrowly defining “program-related” could hamper the development and deployment of interactive content such as personalized electronic

¹¹ See Comments of NAB/MSTV/ALTV at 15-16.

¹² See *Id.* at 3.

¹³ Fee-based features fall within the statutory definition of “ancillary or supplementary” under 47 U.S.C. §§ 336 and are not appropriate for mandatory carriage.

program guides (“EPGs”) and free data broadcasting services.¹⁴ In addition, broadcasters will be foreclosed from offering niche or locally relevant programming along with the primary video program. Such new or interactive content differentiates digital content from traditional analog television, has substantial consumer appeal, and would likely facilitate the DTV transition.

Gemstar emphasizes, and CEA agrees, that the definition of “program-related” should be considered in a flexible way that appropriately considers the possibilities of digital television as opposed to strictly considering the term in the context of television’s analog past.¹⁵ Consumers should not be precluded from accessing services that enable viewers to navigate and choose among various content choices, retrieve thematically related content, access interactive and advanced services, and the like.¹⁶ These new options and services are the very offerings that will allow over-the-air broadcasting to remain a competitive and relevant service in the digital age. To that end, CEA supports Gemstar’s view that a broadcaster’s entire free, over-the-air digital signal, exclusive of subscription ancillary and supplementary services, should be entitled to mandatory carriage.¹⁷

Further, a narrow definition of “program-related” may prevent television receivers from operating as designed and intended or even as required by statute. For instance, current Program System Information Protocol (“PSIP”) streams include a mass of information pertaining to tuning, V-chip, closed captioning, program guides, emergency information alerts, etc.¹⁸ Some of

¹⁴ See Gemstar comments at 9; NAB/MSTV/ALTV comments at 37.

¹⁵ See *Id.* at 2.

¹⁶ See *Id.* at 9.

¹⁷ See *Id.* at 6.

¹⁸ The delivery of PSIP information via cable is the subject of a technical agreement between CEA and the National Cable Television Association outlining the actions needed to assure provision of PSIP to DTV Receivers. See Letter

the narrower definitions of “program-related” advocated in other comments could preclude the transmission of such information and thereby run afoul of Commission and Congressional intent. In sum, a narrow definition of “program-related” could prevent necessary PSIP information from being transmitted and stifle the proliferation of advanced and interactive capabilities. The Commission should take care to ensure that these outcomes are avoided.

of Robert Sachs, President and CEO, NCTA and Gary Shapiro, President and CEO, CEA to William Kennard, Chairman, FCC (Feb. 22, 2000); *see also Compatibility Between Cable Systems and Consumer Electronics Equipment*, FCC 00-342, PP Docket No. 00-67, ¶¶ 34-36 (rel. Sept. 15, 2000) (acknowledging agreements and expressing support for implementation); Erratum in PP Docket No. 00-67 (OET rel. Oct. 25, 2000) (setting forth reporting requirements).

V. CONCLUSION

For the foregoing reasons, CEA respectfully requests that the Commission take appropriate action to ensure: (1) that the DTV transition is hastened and facilitated by the dual or multicast carriage of broadcasters' digital signals, (2) that the DTV transition is marked by an abundance of value-added digitally originated and HDTV programming, and (3) that DTV reaches its potential by fostering the development of advanced and interactive services.

Respectfully submitted,

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August 16, 2001